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Cryptocurrency/Digital Trading on the Road to Becoming a Reality in Jamaica



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It is incontrovertible that the Jamaica Stock Exchange (“JSE”) has been booming within the last decade. Under the leadership of Marlene Street-Forrest, the JSE’s managing director, the JSE was, for a second time, listed by Bloomberg as the best performing stock exchange in the world for the year 2018.

According to Bloomberg, Jamaica’s stock market leads the world in terms of growth. It therefore, was not a surprise when the JSE announced, in August 2018, that the stock exchange was exploring the possibility of offering cryptocurrency/digital asset trading on a local platform in an effort to bring



innovation to capital markets. Such a move by the JSE could put the stock exchange among the front runners to deploy an online digital currency and token trading platform.

Fast forward to April 2019, following a successful live-trading pilot, the JSE announced that the Canadian FinTech company, Blockstation, and the JSE have entered into a Master Agreement, becoming one of the first stock exchanges in the world to sign an agreement to enable live trading of digital assets and security token offerings (STOs) in a regulated and secured environment.

According to the JSE, it plans to leverage the new agreement with Blockstation to:

1. Support international Small and Medium-sized Enterprises (SMEs) by providing them with a streamlined and simple process for raising capital in a compliant and transparent manner through STOs;
2. Demonstrate market leadership by showing the financial community that digital assets and cryptocurrencies can be traded safely through trusted broker members like any other security, in full compliance with regulations;
3. Create an inclusive, regulated market that is more accessible to institutions, as well as non-accredited investors who would otherwise be excluded from lucrative opportunities in the digital asset space; and
4. Streamline the public disclosure process for SMEs, making it easier and more cost effective to list shares and other assets.

This is no doubt ‘exciting stuff’, and since the announcement in April, there has been a lot of buzz in the business community in Jamaica, as Jamaican companies and investors are fascinated while still cautious and in some cases, skeptical about this new trading platform that will be rolled out by the JSE, and the new opportunities that this platform will bring.

The Legal Framework

The curiosity and skepticism also extend to what regulatory guidelines and procedures will be put into place to support this new trading ecosystem in Jamaica. Cryptocurrency trading transactions are not yet expressly within the contemplation of the legislative framework dealing with banking or securities in Jamaica, and therefore there is no express prohibition. Consequently, it will be interesting to see the regulations and guidelines that will be issued by the JSE, the Financial Services Commission and the Bank of Jamaica (“BOJ”) to facilitate this new digital trading.

The Securities Act



Carrying on a business of dealing in “securities” is regulated under the Securities Act. The Securities Act, in section 2, defines “securities” to include in particular “(c) documents or writings commonly known as securities by order (d) rights in, or options in respect of, a derivative... (f) collateral trust certificates, preorganization certificates, or subscriptions, transferable shares, investment contracts, voting trust certificates or certificates of deposit for securities... (h) any right, interest or instrument designated by the Commission by order made with the approval of the Minister and published in the Gazette”.

Although the Securities Act makes no express mention at this time of crypto assets as being “securities”, it is arguable that investment contracts and other related documents associated with its application could result in the crypto/digital assets falling within this definition. Additionally, the Securities Act does provide some flexibility for the definition of “securities” to be expanded, where the Minister has the power to designate a right, interest or instrument as a “security”, which could include crypto/digital assets.

Bank of Jamaica Act

Section 22A of the Bank of Jamaica Act (“BOJ Act”) expressly restricts foreign currency transactions, whereby only authorized dealers in Jamaica may carry on a business of buying, selling, borrowing or lending foreign currency, including where there is a transaction involving the payment of Jamaican currency. Authorized Dealers under the BOJ Act typically refer to commercial banks, merchant banks and cambios.

Under the BOJ Act, foreign currency is simply defined as any currency other than Jamaican currency. There is no definition under the BOJ Act for currency, and it is arguable that the term is wide enough to also encompass cryptocurrency. On the other hand, however, not being an official currency or legal tender of another jurisdiction, it could also be argued that it ought not to be treated as falling within the definition of “foreign currency”. Banking Services Act and Payment, Clearing and Settlement Act Under the Banking Services Act (“BSA”) the issuing of electronic money is regulated and requires a licence.

The BSA defines “electronic money” (e-money) as “monetary value represented by a claim on the issuer thereof, which value is- (a) stored or recorded by electronic means; (b) provided by the issuer in exchange for the present or future receipt of moneys or other valuable consideration from the person entitled to make the claim; (c) transferable and accepted as a means of payment by persons other than the issuer, whether via point of sale or similar technology or otherwise; (d) redeemable or repayable, whether in full or in part, on demand for cash, by deposit into a bank account or through the use of any automated banking or automated teller machine or any similar device; or (e) not referable to credit facilities, whether secured or unsecured, extended by the issuer.

It is arguable therefore that a cryptocurrency transaction would fall within this



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definition. Additionally, e-money is also regulated under regulatory guidelines issued under the Payment, Clearing and Settlement Act (“PCSA”). This Act makes provisions for the protection of clearing and settlement systems from disruptions that may lead to risks to the stability of financial systems, and cause loss of confidence in the public payment regime in general.

The Guidelines for Electronic Retail Payment Services (“ERPS”) issued under the PCSA defines e-money as electronically, including magnetically, stored monetary value on any device or instrument or server as represented by a claim on the payment service provider, which is issued on receipt of funds for the purpose of making payments and which is accepted as a means of payment by persons other than the payment service provider and includes e-money stored on a device such as a SIM card or a server and accessible via telephone, internet or other access devices, cards and other similar instruments. Where cryptocurrency may be viewed as e-money, the ERPS Guidelines would apply.

BOJ’s Current Stance

It has been reported that it is the BOJ’s stance that although committed to facilitating the enhanced use of technology in the provision of financial services, while preserving financial and payment system stability, it does not view virtual currencies as foreign currencies, as there is no monetary authority that issues or backs them, and further, it does not regulate or supervise virtual currencies.

The BOJ is reported also to have stated that it has not authorised any entity to operate a virtual currency platform, which may suggest that it regards its authorisation as being required for that purpose. The BOJ is also reported to be “building cryptocurrency awareness” and to have stated that “regulatory strategies will be pursued where appropriate and the requisite advisories will be issued if deemed necessary”.

In the midst of the excitement and mysticism surrounding cryptocurrency/digital asset trading, now is as a good time as any for investment brokers, advisers, potential security token offerors and investors themselves to buckle up, as this type of trading hits the road to becoming a full-fledged reality in Jamaica. In order to do so, these persons will need to arm themselves with a good understanding of the existing legal framework, as the new digital trading platform is rolled out. Going forward, it will also be necessary to look at and examine the new regulations and guidelines to be issued by the regulators and any amendments to the existing laws, as we move full speed ahead on crypto/digital trading.

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